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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

DAREN OLSEN,

Defendant and Appellant.

2d Crim. No. B293481
(Super. Ct. No. 18PT-00529)
(San Luis Obispo County)

Daren Olsen appeals an order committing him to the Department of Mental Health for treatment as a mentally disordered offender. (MDO; Pen. Code, § 2962 et seq.)¹ Appellant contends that the trial court abused its discretion in denying his *Faretta* motion (*Faretta v. California* (1975) 422 U.S. 806) to represent himself. We affirm.

¹ All statutory references are to the Penal Code.

Procedural History

Appellant was sentenced to state prison in 2014 for battery on a non-inmate. (§ 4501.5.) In 2018, the Board of Prison Terms (BPT) certified appellant as an MDO and committed him to the State Department of Mental Health for treatment. Appellant filed a petition challenging the BPT decision (§ 2966, subd. (b)), was appointed counsel, and personally waived jury trial. A week before trial, appellant brought a *Faretta* motion to represent himself and the motion was denied.

Doctor Dia Gunnarsson, a forensic psychologist, testified that appellant suffered from bipolar disorder, a severe mental disorder with psychotic features that included grandiose delusions, hearing voices, disorganized thought processes, and beliefs that other people can hear appellant's thoughts or he can hear their thoughts. When appellant was admitted to Atascadero State Hospital, appellant was treated for mania, hypermania, delusional beliefs, grandiosity, and paranoia. The doctor stated that appellant had a history of substance abuse, had little insight about his severe mental disorder, and believed he could manage fine without medication. Dr. Gunnarsson opined that appellant met all the MDO criteria, that the severe mental disorder was not in remission, and that appellant was a substantial danger to others.

Appellant "absolutely agree[d]" that he suffers from bipolar disorder and testified that "my problems are very psycho emotional." When asked about substance abuse treatment, appellant said "I've got a history of absconding" and "I used cocaine twice last time I was out." Appellant was taking lithium for his bipolar disorder and said that if he started using street

drugs, it was not “something that’s going to catapult me into a manic frame of mind.”

Faretta

Appellant argues that the trial court erred in denying his due process and statutory right of self-representation. At a pretrial hearing, appellant submitted a *Faretta* waiver form that asked why he wanted to represent himself. Appellant wrote “expressly feel a more personal experience means more change.” The trial court said “that doesn’t follow from the question” and asked appellant to explain. Appellant said, “I just believe that if I can speak to you more in person rather than just have someone speak for me, that that could mean, you know, exactly the -- you know, the opportunity to be personal and -- and -- and bring a change, you know, on my behalf.”

The trial court stated that appellant should ask his attorney about testifying, and that if appellant chose to testify, “[y]ou will be able to address me during the course of the trial.” Appellant thought that was a good idea and said, “[a]s long as I can address you, then, honestly, that’s mostly what I’m concerned about.” The trial court denied the motion for self-representation, stating “I don’t believe you have the ability to do that.”

Because MDO proceedings are civil in nature, appellant had a statutory but not a constitutional right to represent himself. (*People v. Williams* (2003) 110 Cal.App.4th 1577, 1588-1589 (*Williams*).) There is no Sixth Amendment right of self-representation. (*Id.* at pp. 1587-1589.) Appellant argues that section 2972 gives defendants the statutory right to self-representation in MDO proceedings and once given, the right may not be taken away without due process of law. (*Id.* at p. 1592.)

A trial court may deny a *Faretta* motion if it is equivocal, made in passing anger or frustration, or intended to delay or disrupt the proceedings. (*People v. Butler* (2009) 47 Cal.4th 814, 825.) In assessing whether a *Faretta* motion is equivocal, the trial court determines “whether the defendant truly desires to represent himself.” (*People v. Marshall* (1997) 15 Cal.4th 1, 23 (*Marshall*).) The court should examine “not only whether the defendant has stated the motion clearly, but also the defendant’s conduct and other words,” drawing “every reasonable inference against waiver of the right to counsel.” (*Ibid.*) An ambivalent, insincere, or emotional request for self-representation may be denied. (*Id.* at p. 21.)

Appellant submitted a *Faretta* waiver form that raised a number of concerns about his ability to represent himself. The form asked “Why do you want to represent yourself?” Appellant wrote, “expressly feel a more personal experience means more change” and that he had no legal training and had never represented himself before. The form asked “Have you been treated for any emotional or mental illness.” Appellant responded, “I’ve healed from much abuse as a boy.”

When the trial court asked appellant to explain the *Faretta* request, appellant said “I just believe that if I can speak to you more in person rather than just have someone speak for me, . . . that could . . . bring a change, you know, on my behalf.” The trial court suggested that appellant talk to his trial attorney about testifying and that if appellant did testify, “[y]ou will be able to address me during the course of the trial.” Appellant said “that’s mostly what I’m concerned about,” “[a]s long as I can address you.” Appellant’s trial attorney stated if appellant wants to testify “I will be happy to put [appellant] on.” The trial court

said “I would be happy to hear from you at that time.” Appellant answered “Good. That’s all.”

The trial court reasonably concluded that appellant was withdrawing his request for self-representation, and, if not, that appellant lacked the ability to represent himself. The request for self-representation was ambivalent and equivocal in that appellant said he wanted the court to hear personally from him to effect “more change.” The written answers on the *Faretta* form and appellant’s explanation of what he wanted was confusing, non-responsive, and failed to show that appellant knowingly and unequivocally wanted to represent himself. (*Marshall, supra*, 15 Cal.4th at pp. 20-25; see *Brewer v. Williams* (1977) 430 U.S. 387, 404 [courts are to indulge in every reasonable presumption against waiver of counsel].) Substantial evidence supported the finding that appellant lacked the ability to represent himself. Appellant makes no showing that the trial court abused its discretion in denying the request for self representation. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 566.)

Assuming that the trial court erred in denying the *Faretta* motion, the error was harmless. (*People v. Fraser* (2006) 138 Cal.App.4th 1430, 1450 (*Fraser*).) The MDO evidence was overwhelming. There is no reasonable probability that a more favorable result would have been reached had appellant been granted leave to represent himself. (See *Williams, supra*, 110 Cal.App.4th at pp. 1592-1593.) Nor has appellant demonstrated that denial of his statutory right of self-representation affected the fairness or accuracy of the trial. (See, e.g., *Fraser, supra*, 138 Cal.App.4th at pp. 1450-1451.)

The judgment (MDO commitment order) is affirmed.

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YEGAN, Acting P. J.

We concur:

PERREN, J.

TANGEMAN, J.

Jacquelyn H. Duffy, Judge

Superior Court County of San Luis Obispo

Gerald J. Miller, under appointment by the Court of
Appeal for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Zee Rodriguez, Corey J. Robins, Deputy
Attorneys General, for Plaintiff and Respondent.